HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 674 of 2001
Old F.A. No. 42 of 1991

State of U.P. through Collector,
Tehri Garhwal

….Appellant.

Versus

Vipin Kumar Agarwal, S/O Sri Jagdish Prasad Agarwal,
Proprietor M/s Seema Forwarding Agency, Dev Prayag,
Tehri Garhwal.

….. Respondent.

Sri Nand Prasad, Learned Standing Counsel for the appellant.
Sri Rajendra Kotiyal learned counsel for respondent.

Dated April 21, 2006
P.C.: Hon. B.S. Verma, J.

This appeal is directed against the judgment and decree dated 16-10-1990 passed by the District Judge Tehri Garhwal, in Original Suit No. 72 of 1988, Vipin Kumar Agrawal Vs. U.P. State, whereby the suit of the plaintiff-respondent for recovery of Rs. 7425/- was decreed with costs along with pendente lite future interest @ 12% per annum.

Relevant facts giving rise to the present appeal are that the respondent-plaintiff filed a suit before the court below with the averment that he was proprietor M/s Seema Forwarding Agency and owner of the truck No. UPY 2127. On an agreement entered into between the parties on 18.5.1985 for supply of water to different villages at the stipulated rate of Rs. 7.50 per km for supply and return at the same rate, the work was performed as per agreement deed by the plaintiff. The plaintiff was required to make five rounds per day. The agreement was for the period 8.5.85 to 31.7.1985. The plaintiff took up the work of contract. During the contract work, the defendant ordered the plaintiff on 17.5.85 to make three rounds of water supply instead of five rounds. Subsequently, Tahsildar, Deoprayag, representative of the defendant asked the plaintiff to

Make four rounds instead of 3. As per agreement clause para-9, the truck No. UPY-2127 of the plaintiff remained under control of Tahisldar Deoprayag. The plaintiff carried out the order of Tahsildar Deoprayag dated 1.6.85. On 15.7.1985 again, the plaintiff was ordered to make 3 rounds instead of 4 trips and another order was passed on the same day to stop excess water supply. The entire work was completed by 31.7.1985. Ultimately, the plaintiff submitted the bill as per contract for payment to the defendant, but the defendant made payment of 3 round of water supply and did not pay for excess one trip of said water supply. The charges due to the plaintiff as per order of Tahsildar Deoprayag from 1.6.85 to 15.7.85 amounted to Rs. 7450/-. Despite oral request made by the plaintiff, no payment was made, which necessitated serving of notice under Section 80 C.P.C. on the defendant, hence the suit was filed.

The defendant-appellant denied the plaint allegations. It was pleaded the under the agreement as order dated 17.5.85 was passed fro supply of water in 3 round daily. The plaintiff was not justified in supplying one extra round of water without the orders of the Collector. It was stated that Tahsildar Deoprayag was not competent to pass orders.

The learned trial court framed necessary issues in the suit. After perusing the evidence led by the parties particularly para 9 of the agreement deed, the learned trial court came to the conclusion that eh Tahisldar Deoprayag was empowered by the Collector Tehri Garhwal to issue necessary instruction to the plaintiff. Ultimately, it was held that the plaintiff gave on more round of water supply from 1.6.85 to 15.6.85 as per contract between the parties. The issues were decided in favour of the plaintiff-respondent. Accordingly, the suit of the respondent was decreed.

The impugned judgment and decree has been assailed on the ground that the Collector was authorised to enhance the

number of trips and not Tahsildar, therefore, the finding of the trial court is perverse and not based on evidence on record.

I have heard learned Standing Counsel for the State and perused the material on record including the impugned judgment.

A perusal of the impugned judgment clearly goes to show that Tahsildar Deoprayag was empowered by the Collector to issue necessary instructions regarding water supply by the plaintiff. The plaintiff filed Ext. 2 which is letter dated 15.7.85 sent by Tahsildar stating that he was orally asked to supply water in four rounds form 1.6.85 to 15.7.85 in anticipation of sanction of Collector. Ext. 3 is the letter sent by the Tahsildar dated 15.7.85 asking the plaintiff to supply water in 3 rounds only. The record reveals that he plaintiff was orally asked to make excess supply of one round of water from 1.6.85 to 15.7.85. Moreover, clause 9 of the agreement in question clearly shows that the Collector Tehri Garhwal had empowered the Tahsildar in the matter under dispute. The defendant-appellant failed to substantiate its contention by leading any evidence to the contrary. The findings of the court below are based on evidence on record. In my view, the learned Trial Court was fully justified in decreeing the suit of the plaintiff-respondent. The impugned judgment and decree does not suffer from any infirmity.

The appeal preferred by the State has no merit and it liable to be dismissed.

The appeal is hereby dismissed. The impugned judgment and decree dated 16-10-1990 is upheld. No order as to costs.

(B.S. Verma,J.)

RCP